

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

DIANA B. KOSS, M.D.

License No. 29375
For the Practice of Allopathic Medicine
In the State of Arizona.

Case No. MD-10-1473A

**ORDER FOR LETTER OF REPRIMAND
AND PROBATION AND CONSENT TO
THE SAME**

Diana B. Koss, M.D. ("Respondent") elects to permanently waive any right to a hearing and appeal with respect to this Order for Letter of Reprimand and Probation; admits the jurisdiction of the Arizona Medical Board ("Board"); and consents to the entry of this Order by the Board.

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 29375 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-10-1473A after Respondent notified the Board of her alcohol dependency and her suspension from the staff of a medical clinic.

4. On December 8, 2010, staff at the medical clinic where Respondent worked confronted her with their concerns that she may be using alcohol during office hours. Clinic staff performed a blood alcohol level test on Respondent and found the alcohol level in her system to be .13. The clinic immediately suspended Respondent, and on December 10, 2010, both the clinic and Respondent notified the Board of her alcohol dependency and suspension.

5. On December 14, 2010, Board staff interviewed Respondent, who admitted that she was addicted to alcohol. She stated that she began drinking heavily due to stress and that she had been consuming alcohol on her lunch break at work.

6. The Board's Executive Director ordered Respondent to undergo an assessment by the Board's Physician Health Program (PHP) Contractor. During the assessment, Respondent admitted that she was drinking multiple times a day. On December 14, 2010, Respondent entered into an Interim Consent Agreement for Practice Restriction.

7. On January 24, 2011, Respondent entered into residential treatment and successfully completed the program on February 23, 2011. She was diagnosed with alcohol dependence in early full remission and was deemed safe to practice by the PHP contractor. On March 9, 2011, Respondent entered into an Interim Consent Agreement to participate in PHP.

8. On May 24, 2011, based upon the PHP contractor's opinion that Respondent was safe to practice, the Executive Director vacated the Interim Practice Restriction.

9. The standard of care required Respondent to not have an elevated blood alcohol level while seeing clinical patients with active medical issues.

10. Respondent deviated from the accepted standard of care by having an elevated blood alcohol level while seeing clinical patients with active medical issues.

11. There is always the potential for harm to a patient whenever a provider is impaired while practicing medicine because of the increased likelihood of a missed diagnosis or improper treatment.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(q) (“[a]ny conduct or practice that is or might be harmful or dangerous to the health of the patient or the public.”).

3. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(h) (“[h]abitual intemperance in the use of alcohol or habitual substance abuse.”).

ORDER

IT IS HEREBY ORDERED THAT:

I. Respondent is issued a Letter of Reprimand.

II. Respondent is placed on Probation for **five years** with the following terms and conditions:

1. **Participation**¹. Respondent shall promptly enroll in and participate in the Board’s Physician Health Program (PHP) monitoring service which is administered by a private contractor. (“Monitor”).

2. **Relapse Prevention Group**. Respondent shall attend the Monitor’s relapse prevention group therapy sessions one time per week for the duration of this Order, unless excused by the relapse prevention group facilitator for good cause. Individual relapse therapy may be substituted for one or more of the group therapy sessions, if Monitor pre-approves substitution. The relapse prevention group facilitators or individual relapse prevention therapist shall submit monthly reports to the Monitor regarding attendance and progress.

3. **12 Step or Self-Help Group Meetings**. If applicable, Respondent shall attend ninety 12-step meetings or other self-help group meetings appropriate for

¹ Respondent’s PHP participation is retroactive to March 9, 2011.

1 substance abuse and approved by the Monitor, for a period of ninety days. Upon
2 completion of the ninety meetings in ninety days, Respondent shall participate in a 12-step
3 recovery program or other self-help program appropriate for substance abuse as
4 recommended by the Monitor. Respondent shall attend a minimum of three 12-step or
5 other self-help program meetings per week.. Two meetings per month must be Caduceus
6 meetings. Respondent must maintain a log of all self-help meetings.

7 4. **Approved Primary Care Physician.** Respondent shall promptly obtain a
8 primary care physician and shall submit the name of the physician to the Monitor in writing
9 for approval. The approved primary care physician ("PCP") shall be in charge of providing
10 and coordinating Respondent's medical care and treatment. Except in an *Emergency*,
11 Respondent shall obtain medical care and treatment only from the PCP and from health
12 care providers to whom the PCP refers Respondent. Respondent shall promptly provide
13 a copy of this Order to the PCP. Respondent shall also inform all other health care
14 providers who provide medical care or treatment that Respondent is participating in PHP.
15 "*Emergency*" means a serious accident or sudden illness that, if not treated immediately,
16 may result in a long-term medical problem or loss of life.

17 5. **Medication.** Except in an *Emergency*, Respondent shall take no *Medication*
18 unless the PCP or other health care provider to whom the PCP refers Respondent
19 prescribes the *Medication*. Respondent shall not self-prescribe any *Medication*.
20 "*Medication*" means a prescription-only drug, controlled substance, and over-the counter
21 preparation, other than plain aspirin, plain ibuprofen, and plain acetaminophen. If a
22 controlled substance is prescribed, dispensed, or administered to Respondent by any
23 person other than PCP, Respondent shall notify the PCP in writing within 48 hours and
24 notify the Monitor immediately.

25 6. **No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol, any

1 food, or other substance containing poppy seeds or alcohol.

2 7. **Biological Fluid Collection.** Respondent shall provide the Monitor in
3 writing with one telephone number that shall be used to contact Respondent on a 24 hour
4 per day/seven day per week basis to submit to biological fluid collection. For the purposes
5 of this section, telephonic notice shall be deemed given at the time a message to appear is
6 left at the contact telephone number provided by Respondent. Respondent authorizes any
7 person or organization conducting tests on the collected samples to provide testing results
8 to the Monitor. Respondent shall comply with all requirements for biological fluid
9 collection.

10 8. **Out of State Travel and/or Unavailability at Home/Office Telephone**
11 **Number.** Respondent shall provide the Monitor with written notice of any plans to travel
12 out of state.

13 9. **Payment for Services.** Respondent shall pay for all costs, including Monitor
14 costs, associated with participating in PHP at time service is rendered, or within 30 days of
15 each invoice sent to Respondent.

16 10. **Interviews.** Respondent shall appear in person before the Monitor for
17 interviews upon request, upon reasonable notice.

18 11. **Address and Phone Changes, Notice.** Respondent shall immediately notify
19 the Monitor in writing of any change in office or home addresses and telephone numbers.

20 12. **Relapse, Violation.** In the event of chemical dependency relapse by
21 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent
22 shall promptly enter into an Interim Order for Practice Restriction and Consent to the
23 Same that requires, among other things, that Respondent not practice medicine until such
24 time as Respondent successfully completes long-term inpatient treatment for chemical
25 dependency designated by the Monitor and obtains affirmative approval from the Board or

1 the Executive Director to return to the practice of medicine. Prior to approving
2 Respondent's request to return to the practice of medicine, Respondent may be required
3 to submit to witnessed biological fluid collection or undergo any combination of physical
4 examination, psychiatric or psychological evaluation. **In no respect shall the terms of**
5 **this paragraph restrict the Board's authority to initiate and take disciplinary action**
6 **for violation of this Order.**

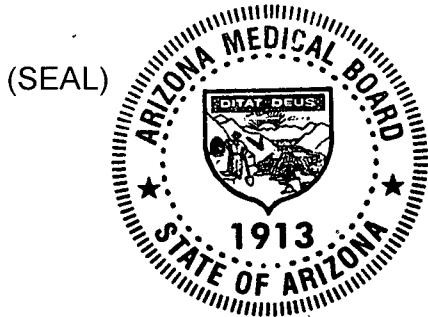
7 13. **Notice Requirements.** Respondent shall immediately provide a copy of this
8 Order to all current and future employers and all hospitals and free standing surgery
9 centers where Respondent has privileges. Within 30 days of the date of this Order,
10 Respondent shall provide the Monitor with a signed statement of compliance with this
11 notification requirement. Respondent is further required to notify, in writing, all employers,
12 hospitals and free standing surgery centers where Respondent currently has or in the
13 future gains employment or privileges, of a chemical dependency relapse.,

14 14. **Out-of-State.** In the event Respondent resides or practices as a physician
15 in a state other than Arizona, Respondent shall participate in the rehabilitation program
16 sponsored by that state's medical licensing authority or medical society. Respondent shall
17 cause the monitoring state's program to provide written quarterly reports to the Monitor
18 regarding Respondent's attendance, participation, and monitoring. The monitoring state's
19 program and Respondent shall immediately notify the Monitor if Respondent: a) is non-
20 compliant with any aspect of the monitoring requirements; b) relapses; c) tests positive for
21 controlled substances; d) has low specific gravity urine drug test(s), missed and/or late
22 urine drug tests, or otherwise rejected urine drug tests; and e) is required to undergo any
23 additional treatment.

24 15. This Order supersedes all previous consent agreements and stipulations
25 between the Board and/or the Executive Director and Respondent.

1 16. The Board retains jurisdiction and may initiate new action based upon any
2 violation of this Order.

3 DATED AND EFFECTIVE this 11th day of AUGUST, 2011.



ARIZONA MEDICAL BOARD

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8 By 
Lisa S. Wynn
Executive Director

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11 **CONSENT TO ENTRY OF ORDER**

12 1. Respondent has read and understands this Consent Agreement and the
13 stipulated Findings of Fact, Conclusions of Law and Order ("Order"). Respondent
14 acknowledges she has the right to consult with legal counsel regarding this matter.

15 2. Respondent acknowledges and agrees that this Order is entered into freely
16 and voluntarily and that no promise was made or coercion used to induce such entry.

17 3. By consenting to this Order, Respondent voluntarily relinquishes any rights to
18 a hearing or judicial review in state or federal court on the matters alleged, or to challenge
19 this Order in its entirety as issued by the Board, and waives any other cause of action
20 related thereto or arising from said Order.

21 4. The Order is not effective until approved by the Board and signed by its
22 Executive Director.

23 5. All admissions made by Respondent are solely for final disposition of this
24 matter and any subsequent related administrative proceedings or civil litigation involving
25 the Board and Respondent. Therefore, said admissions by Respondent are not intended
or made for any other use, such as in the context of another state or federal government

1 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or
2 any other state or federal court.

3 6. Upon signing this agreement, and returning this document (or a copy thereof)
4 to the Board's Executive Director, Respondent may not revoke the consent to the entry of
5 the Order. Respondent may not make any modifications to the document. Any
6 modifications to this original document are ineffective and void unless mutually approved
7 by the parties.


8 7. This Order is a public record that will be publicly disseminated as a formal
9 disciplinary action of the Board and will be reported to the National Practitioner's Data
10 Bank and on the Board's web site as a disciplinary action.

11 8. If any part of the Order is later declared void or otherwise unenforceable, the
12 remainder of the Order in its entirety shall remain in force and effect.

13 9. If the Board does not adopt this Order, Respondent will not assert as a
14 defense that the Board's consideration of the Order constitutes bias, prejudice,
15 prejudgment or other similar defense.

16 10. Any violation of this Order constitutes unprofessional conduct and may result
17 in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation,
18 consent agreement or stipulation issued or entered into by the board or its executive
19 director under this chapter") and 32-1451.

20 11. ***Respondent has read and understands the conditions of probation.***

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23 
24 Diana B. Koss, M.D.

DATED: 6-9-11

1 EXECUTED COPY of the foregoing mailed
2 this 17th day of August, 2011 to:

3 Diana B. Koss, M.D.
4 Address of Record

5 Sucher & Greenberg, P.C.
6 Address on file

7 ORIGINAL of the foregoing filed
8 this 17th day of August, 2011 with:

9 Arizona Medical Board
10 9545 E. Doubletree Ranch Road
11 Scottsdale, AZ 85258

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13 Arizona Medical Board Staff
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